such a defence is for the appellant to prove that the respondent did not in his own interest take reasonable care of himself and contributed, by his want of care, to his own injury, (see *Nance* v. *British Columbia Electric Railway Co. Ltd.*,[1] *per* Viscount Simon at p. 450).

Counsel for the respondent relied entirely upon *Joseph Eva, Ltd.* v. *Reeves.*[2] In that case it had been decided that one of the vehicles concerned had entered the crossroads against the red lights. It was held that the driver of a motor car who entered upon a crossroads with the lights in his favour was not under any obligation to assume that the driver of another vehicle might be entering the crossroads from left or right with the red lights against him.

In the present case, however, D'Cotta J., did not find that the appellant entered the crossroads with the red lights against him. The finding of the learned trial judge was that the appellant was "trying to beat the traffic lights" which means that the appellant entered the crossroads when the lights were amber.

We would respectfully adopt the observations of Barry J. in *Godsmark* v. *Knight Brothers (Brighton) Ltd.*[3] That was a case where two drivers, both of whom had obeyed traffic lights in entering a road junction, were each held to be guilty of negligence. Dealing with the position of the defendant Barry J. said:

"Here, the lights had just turned green in favour of Mr. Knight (the defendant) and in his Lordship's opinion ... there was an obligation on Mr. Knight to see that no other vehicles had entered the crossroads while the lights were amber.... Mr. Knight was bound to contemplate that some vehicle which had properly entered the crossroads might still be passing across, although the lights had changed to green; he was not entitled to cross in the way that he did. It was impossible to absolve him from blame."

We are of the view that although the respondent was entitled to proceed and enter the junction immediately the lights turned green in his favour, he should in his own interest have kept a lookout for vehicles coming from the direction of Aljunied Road in case some vehicle which had properly entered the crossroads might still be passing across. If he had looked to his right when moving off from the stop line he would have seen the appellant's motor van coming and would have been able to take effective steps to avoid a collision. We hold that, in all the circumstances prevailing, the respondent had contributed to this accident.

The bulk of the blame is undoubtedly on the appellant. Having regard to all the circumstances of the case, four-fifths of the blame must rest on the appellant and one-fifth on the respondent.

The appeal is allowed with costs.

Appeal allowed.

Solicitors: *Donaldson & Burkinshaw; Murphy & Dunbar.*

TALIB BIN HAJI HAMZAH v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Chua and Choor Singh JJ.) May 18, 1976]

[Singapore — Criminal Appeal No. 10 of 1975]

Criminal Law and Procedure — Arms offences — Armed gang robbery in which pistol was used — Offence under Arms Offences Act, 1973 — Onus on prosecution to show that accused may reasonably be presumed to have known that person who used the arm was carrying or had in his possession or under his control such arm — Defence of duress — Onus on accused — Penal Code, ss. 390, 395, 397 — Arms Offences Act, 1973, ss. 2 and 5.

Penal Code, ss. 390, 395 and 397 — Armed gang robbery.

This was an appeal from the conviction of the appellant by a court of two judges of two offences under section 5 of the Arms Offences Act, 1973. The evidence showed that the appellant was an accomplice in a robbery in which a pistol was used.

Held, dismissing the appeal: (1) to bring home a charge under section 5 of the Arms Offences Act, 1973, the prosecution must prove (a) that an offence was committed or an attempt to commit an offence was made; (b) that the accused was an accomplice in the said offence or attempted offence; (c) that the accused was present at the scene of the said offence or attempted offence; (d) that an arm was used within the meaning of section 2 of the Act by a person in the commission or attempted commission of the said offence; and (e) that the accused may reasonably be presumed to have known that the person who used the arm was carrying or had in his possession or under his control such arm;

(2) in this case on the first charge, on the evidence led by the prosecution, the trial judges were correct in their finding (a) that there were ample circumstances present from which they considered it reasonable to presume that the accused knew that the person who used the firearm was carrying it and (b) that the evidence showed that the gun was fired with the intention of causing physical injury and therefore used within the meaning of section 2 of the Act;

(3) on the second charge, the trial judges were correct in their finding that on the evidence tendered by the prosecution the appellant might reasonably be presumed to have known that the person who used the arm in the robbery was carrying such arm and that the arm was used in the robbery.

Cases referred to:-

(1) *Shyam Behari* v. *State of Uttar Pradesh* [1957] S.C. 320.

COURT OF CRIMINAL APPEAL.

Datuk David Marshall for the appellant.

Loh Lin Kok (Deputy Public Prosecutor) for the respondent.

Wee Chong Jin C.J. (delivering the judgment of the Court): At a trial before two judges of the High Court, the appellant was convicted and sentenced to death on each of the following two charges: —

1. That you Talib bin Haji Hamzah, on or about the 17th day of September 1974, at about 12.30 p.m. at the premises of Nam Yick Jewellers at No. 474 North Bridge Road, Singapore, were an accomplice to an armed gang robbery, an offence under sections 395 and 397 of the Penal Code (Chapter 103) committed by yourself, and four other persons unknown, in which robbery at least one arm, to wit, a pistol was used by at least one of the aforesaid persons when you were present at the scene of the said robbery and you may reasonably be presumed to have known that such person was carrying such arm, and you have thereby committed an offence punishable under section 5 of the Arms Offences Act, 1973 (No. 61/73).

2. That you Talib bin Haji Hamzah are charged that on or about the 9th day of December 1974 at about 12.15 p.m. at the premises of Mandarin Jewellers (Pte) Ltd. at No. 117 Arab Street, Singapore, was an accomplice to an armed gang

robbery, an offence under sections 395 and 397 of the Penal Code (Chapter 103) committed by yourself, and four other persons unknown, in which robbery at least one arm, to wit, a pistol, was used by at least one of the aforesaid persons when you were present at the scene of the said robbery and you may reasonably be presumed to have known that such person was carrying such arm, and you have thereby committed an offence punishable under section 5 of the Arms Offences Act, 1973 (No. 61/73).

The appeal is against both convictions.

The evidence led by the prosecution relating to the first charge, showed quite clearly that on September 17, 1974 at about 12.30 p.m. armed gang robbery within the meaning of section 395 of the Penal Code was committed on the premises of Nam Yick Jewellers at 474 North Bridge Road, Singapore. Five male Malays, three of whom were armed with fire-arms, took part in this daring daylight robbery and took away a considerable amount of jewelry from the glass show cases on the premises. The appellant was one of them. His fingerprints were found on a glass show case. The fact that he took part in the robbery was not in issue at the trial and when his defence was called he admitted taking part in this robbery.

The manner in which the robbery was committed was as follows. One of the robbers who was armed with a gun went up to the watchman at the front entrance of this jewelry shop and pointing his gun at him, warned him not to move. This robber then called out to the other four robbers to go in. The watchman saw four male Malay youths all about 20 years old come together into the shop, two of whom were carrying a gun each in his hand. About that time he also saw the man guarding him fire a shot or two towards the inside of the shop. The proprietor of the shop, Pooh Cheok Ming, who was then seated on a sofa towards the rear portion of the premises, on hearing the loud gun shot noise and the sound of shattering glass, stood up and looked in the direction from where the noise came. As he stood up he was immediately hit by a bullet in his left shoulder and he saw a male Malay holding a gun and pointing the gun at him. This male Malay who appeared to him to be very aggressive, asked him if he was the proprietor of the shop. Poon Check Ming without replying quickly turned around and hurried through the rear entrance of the shop to the rear portion of the building where there was a staircase leading to the first floor of the premises. He heard two or three gun shots coming from behind him as he was running towards the staircase. He however managed to get to the first floor from where after locking the door he sounded the alarm. In the meantime two of the robbers had scooped a quantity of jewelery from the glass show cases and when the alarm sounded all five robbers ran away. One of them, the one who had been guarding the watchman, before leaving, fired a shot from his gun across the street. This shot struck the name board of a shop on the opposite side of the street.

The prosecution evidence relating to the second charge also showed quite clearly that on December 9, 1974 at about 12.15 p.m. armed gang robbery was committed on the premises of Mandarin Jewellers (Pte) Ltd. at 117 Arab Street, Singapore. Five male Malays, all armed with fire-arms, took part in the robbery and took away a large quantity of jewelry from the glass show cases on the premises. The appellant was one of them. His fingerprints were found on a glass show case. The fact that he took part in this second robbery was also not in issue at the trial and when his defence was called he admitted taking part in this robbery.

The manner in which this second gang robbery was committed was as follows. On December 9, 1974 at about 12.15 p.m. Leow Han Chuah the managing director of this jewelry shop was standing behind a show case near the entrance to the rear portion of the shop. There were no customers then in the shop but six of his employees were there, four standing behind the show cases and the other two were seated on stools in the centre open space in front of the show cases. The photograph P37 gives a good idea of this shop and the sketch plan P87 gives an idea of the layout of this place. While Leow was thus standing in his shop he noticed four Malay males entering the shop, each carrying a gun in his hand while a fifth Malay male also armed with a gun stood in the centre of the five-foot-way immediately in front of the shop and faced away from the shop. The four gunmen pointed their guns at the persons in the shop and warned them not to make any noise. Then one of the gunmen with his gun motioned the inmates to go towards the rear of the shop. Leow went and stood right behind the table which was behind the centre show case on the right rear as one looks into the shop. The rest of the employees of the shop were herded together behind the centre show case in the space there between the tables on the rear of the shop. The gunman who motioned them to this position stood guard over all of them whilst two of the other men scaled over the show cases on the left hand side of the shop as one looks into the shop. These two men scaled over the show case by stepping on the stools and placing their hands on the glass on the top of the show cases. After these two men had scaled over the show cases the gunman guarding the inmates of the shop threw a cloth bag to the two men and they started scooping the jewelry from the show cases into the bag. While these two were scooping the jewelry, a third gunman got behind the right hand side show cases near the rear and was seen scooping some jewelry into a plastic bag. After about 10 minutes the two men who were scooping jewelry from the left hand side show cases climbed back to the centre open space. Just then the man guarding the inmates of the shop fired a shot towards the ceiling of the shop and immediately thereafter Leow heard two further gun shots coming from the front. Next, the man guarding them ripped off the telephone wires and thereafter all four Malays ran out of the shop in the direction of the road in front. After the robbers had run out of the shop Leow heard two other gun shots and moments later he heard two more gun shots. These last two gun shots came from the direction of the traffic lights at the junction of Arab Street and North Bridge Road which was a short distance from his shop.

At about 12.30 that afternoon taxi No. SH.6281 Z driven by Leow Ho Sai was transporting two passengers and their textiles along Arab Street in the direction of Sungei Road. At the junction of Arab Street and North Bridge Road, the taxi was stationary as the traffic lights were against it. Just then the taxi driver Leow saw two male Malays, both armed with guns,

open fire. The passengers were asked to get out and Leow was asked to keep the engine running and to come out of the taxi. The two passengers immediately got off the taxi. One of the gunmen fired a shot at the seat next to Leow's which was empty. Leow then got out of the taxi and he saw four or five Malays boarding his taxi and driving off in the direction of Sungei Road.

At about that time, Idros bin Abu Bakar a police constable attached to "CISCO" was on duty at the jewelry shop of Poh Heng Goldsmith Ltd. which is in North Bridge Road at the junction of Arab Street and North Bridge Road. Traffic coming along Arab Street and proceeding across this junction towards Sungei Road would be facing this shop on the left as it crosses this junction. Idros was then in police uniform and was standing at the entrance of this shop and facing the junction of Arab Street and North Bridge Road. On hearing some gun shots coming from the direction of Arab Street ahead of him, he was looking in that direction across the junction and he had his hand on his pistol but had not drawn it out. He saw a N.T.U.C. taxi with five persons coming from Arab Street. As the taxi was half way across the junction he saw the man seated next to the driver pointing a pistol in his direction and firing it. He quickly took cover behind the pillar which can be seen in photograph P53. When he came out from his hiding position the taxi had sped away in the direction of Sungei Road. He examined the pillar behind which he had taken cover and found a hole on the pillar caused by a bullet. This hole can be seen in photograph P55. Idros explained that he took cover behind the pillar because he feared being shot at as he had seen the person seated next to the driver pointing the gun at him before he took cover behind the pillar.

The appellant's defence was called on both charges. He elected to make a statement from the dock. His defence on the first charge was that shortly before the first robbery, one Jamaludin had befriended him and had spent a lot of money in entertaining him lavishly on a number of occasions; that later the said Jamaludin asked him to take part in a robbery; that at first he refused to do so; that later on Jamaludin's persuasion he agreed; that Jamaludin promised him $50,000 as his share of the robbery; that he was assured that his life would not be in danger and that if necessary a gun would be fired only to frighten the victims. The appellant claimed that a few days after the first robbery, Jamaludin came to him and gave him $1,500 as his share of the robbery and he in turn told Jamaludin, "This will be the first and the last."

On the second charge, the appellant's defence was that Jamaludin spent the night of December 7, and 8, with him. On the morning of December 9, Jamaludin woke him up at about 7 a.m. and asked him to join him in a robbery on that day but he refused. Jamaludin then pulled out his gun and asked him to choose whether to live or die. He was thus forced to go with Jamaludin and take part in the second robbery. He went and committed the robbery that day as he was all the time frightened of Jamaludin. The appellant claimed that when they were all walking towards the jewelry shop which was to be robbed, Jamaludin "warned me to do my job properly in the shop otherwise he would treat me as one of the employees of the shop and would finish me there." The appellant's case was that on that day he was not able to break away from Jamaludin till the robbery was completed.

The appellant did not call any witness in his defence. The trial judges disbelieved the appellant and rejected his defence on both charges. They held that the appellant had failed to establish duress and was not entitled to the protection or benefit of section 94 of the Penal Code. They found that the case against the appellant on both charges had been proved beyond reasonable doubt and convicted him on both charges.

Before us, counsel for the appellant has raised two points which merit careful consideration but before doing so it is necessary to set out the provisions of section 5 of the Arms Offences Act, 1973 and other relevant provisions of that Act.

Section 5 provides as follows:

> 5. Where any arm is used by any person in committing or in attempting to commit any offence, each of his accomplices in respect of the last mentioned offence present at the scene of such offence who may reasonably be presumed to have known that such person was carrying or had in his possession or under his control such arm, shall, unless he proves that he had taken all reasonable steps to prevent the use of such arm, be guilty of an offence under this Act and shall on conviction be punished with death.

The expression "arm" is defined in section 2 as follows: —

> "arm" means any firearm, air-gun, air-pistol, automatic gun, automatic pistol and any other kind of gun or pistol from which any shot, bullet or other missile can be discharged or noxious liquid, flame or fumes can be emitted, and any component part thereof and includes any bomb or grenade and any component part thereof;

The expression "use" is defined in section 2 as follows: —

> "use", with its grammatical variations, means —
>
> (a) in relation to a firearm, air-gun, air-pistol, automatic gun, automatic pistol and any other kind of gun or pistol from which any shot, bullet or other missile can be discharged or noxious fluid, flame or fumes can be emitted — to cause such shot, bullet or other missile to be discharged or such noxious liquid, flame or fumes to be emitted with intent to cause physical injury to any person; and
>
> (b) in relation to a bomb or grenade — to throw the same, or to cause the same to explode, with intent to cause physical injury to any person or property.

Counsel for the appellant submits that on the evidence before the trial court relating to both robberies, it was not established beyond a reasonable doubt, that in each case a firearm was used within the meaning of section 2. Counsel's contention is that in both cases, a firearm or firearms were discharged indiscriminately in order to intimidate the victims and others who might be inclined to intervene; that because of the definition of "use", a charge under section 5 requires a specific intent on the part of the person who discharged the firearm to be proved, namely the intent to cause physical injury to any person; that there was no evidence of such intent in both cases and that the appellant was therefore not guilty on both charges.

Counsel's second submission is that assuming that a firearm was used within the meaning of section 2 in both robberies, on the evidence tendered, it was unreasonable to presume that the appellant knew in both cases that the robber who so used the firearm in

each robbery, was carrying such firearm. Consequently, as the evidence did not support the requisite presumption under section 5, both convictions were wrong in law.

We propose to examine these submissions separately in relation to each charge. Taking the second submission first, and considering it in relation to the first charge, which arose out of the gang robbery at Nam Yick Jewellers, we find that the trial judges have dealt with this matter in their grounds of decision as follows: —

"It was clear to me that five male Malays had committed the offence of armed gang robbery on the premises of Nam Yick Jewellers.... There was also evidence to show that three of the robbers were armed with firearms and that at least one firearm was used during the commission of this robbery. Poon Cheok Ming ... was shot at two or three times and one of the shots had hit him on his left shoulder and injured him.... There was evidence to show that the accused was one of the five male Malays present in the shop at the time of the robbery and had actively participated in the robbery.

The evidence of how this robbery was carried out revealed that it was a carefully planned act executed with great precision and with almost lightning speed. The incident itself took place in broad day light in one of the busy parts of this city.

There was ample circumstances present here from which we considered it reasonable to presume that the accused knew that the person who used this firearm was carrying it."

Counsel for the appellant submits that these so-called reasons are no reasons at all; that the "ample circumstances" relied upon by the trial judges should have been spelled out and that if the record of the evidence is examined, it will be found that there is no evidence on which it may reasonably be presumed that the appellant knew that the robber who used the firearm was carrying such arm.

Counsel for the Public Prosecutor in reply to this submission contends that bearing in mind that this was a well-planned gang robbery; that the members of the gang knew that they were going to rob a jewelry shop where there would be a guard; that they had in mind the possibility of resistance; that three of the robbers were in fact armed and that it was therefore reasonable to presume that the appellant as a member of the gang knew which three members of the gang carried a firearm.

In our judgment, to bring home a charge under section 5, the prosecution must prove: —

1. that an offence was committed or an attempt to commit an offence was made;
2. that the accused was an accomplice in the said offence or attempted offence;
3. that the accused was present at the scene of the said offence or attempted offence;
4. that an arm was "used", within the meaning of section 2, by a person in the commission or attempted commission of the said offence; and
5. that the accused may reasonably be presumed to have known that the person who "used" the arm was carrying or had in his possession or under his control such arm.

Upon proof of these five elements or ingredients, the burden shifts to the accused to prove "that he had taken all reasonable steps to prevent the use of such arm" and failure on his part to discharge this burden, makes him guilty of an offence under section 5 of this Act, which is punishable with death.

It will be seen that the prosecution had to put before the trial judges sufficient evidence relating to the fifth ingredient, *i.e.* evidence on which the appellant may reasonably be presumed to have known that the person who used the arm in the "Nam Yick" robbery was carrying such arm.

The robber who was alleged to have used an arm in that robbery, within the meaning of section 2, was the one who shot at, and injured, the proprietor of the shop. The evidence showed that he was the same robber who, armed with a gun, went up to the watchman at the front entrance of the jewelry shop, pointed his gun at the watchman and warned him not to move. This robber then called out to the other four robbers, including the appellant, to go into the shop. It is clear from his whole conduct that this robber who was the first person to appear at the shop was undoubtedly the ring leader of the gang and after ordering the rest of his gang to enter the shop, he fired several shots into the shop. Now, as soon as this ring leader appeared at the shop and pointed his gun at the watchman, the appellant and the other three robbers became aware, if they were not aware of it earlier, that he was carrying a gun. And the shot which injured the proprietor was fired by this ring leader after the appellant became aware that the ring leader was carrying a gun. It follows therefore that at the time the arm was used within the meaning of section 5 of the Act, the appellant "may reasonably be presumed to have known" that the ring leader was carrying such arm. The appellant did not say what steps, if any, he took to prevent the use of such arm.

Furthermore, the very fact that this was a gang robbery, daringly committed during broad daylight, at a jewelry shop in a busy shopping area, indicates that the five robbers must have discussed and planned this robbery, very thoroughly. They knew there was a guard at this shop and that there may be resistance. It can properly be inferred that they discussed all the relevant matters, such as what arms and how many they should carry, which of them should be armed, which of them would tackle the guard, which of them would collect the jewelry from the show cases, who would give the signal to leave and by what means they will get away from the scene of the robbery. It is therefore extremely improbable that the appellant did not know that the robber who shot at the proprietor was carrying a gun when they were about to rob the jewelry shop.

In our judgment, on the evidence led by the prosecution, the trial judges were correct in their finding that "there were ample circumstances present from which" they "considered it reasonable to presume that the accused knew that the person who used the firearm was carrying it."

The next submission is that the robber who fired several shots into this jewelry shop did not intend to cause physical injury to any person; that he fired at random to frighten the persons present in the shop; that the proprietor was injured by a bullet which had ricochetted off the wall or the floor of the shop and that consequently it could not be said that an arm had been used within the meaning of section 2 of the Act.

In our opinion, the evidence of the proprietor Poon Cheok Ming, was crucial on this issue. He was seated on a sofa towards the rear portion of the shop. On hearing the loud gun shots and the noise of shattering glass, he stood up and looked in the direction from where the noise came. As he stood up he was immediately hit in his left shoulder, obviously by another bullet, and he saw a male Malay holding a gun and pointing it at him. This Malay asked him aggressively if he was the proprietor of the shop but Poon Cheok Ming without replying quickly turned around and hurried through the rear entrance of the shop to a staircase at the rear which led to the first floor. Poon's evidence was that as he was rushing towards that staircase he heard two or three more gun shots fired from behind him. The fact that gun shots were fired in the direction of Poon was corroborated by the watchman and by the proprietor's son Poon Wai Kong.

Counsel for the appellant has made much of the fact that the wound on Poon's shoulder caused by the bullet was superficial and that the direction of the wound, in particular the entry and exit points of the bullet, supported his contention that the bullet did not directly hit Poon but struck him after it ricochetted off the wall or the floor.

In our judgment, even if the bullet which struck Poon, did so after it ricochetted off some other surface, it does not follow that it was not fired with the intention of causing physical injury. The bullet may have hit some other surface first due to inexpert marksmanship. The real question before the trial judges was the intention with which the gun was fired in the direction of Poon, and on this question there was the evidence of Poon, the evidence of the watchman Jais bin Kasman and the evidence of Poon's son Poon Wai Kong. Furthermore, more than one shot was fired in the direction of Poon. Even when he was running away to escape from the gunman, at least two more shots were fired in his direction. In the light of all this evidence, the trial judges who saw and heard the witnesses came to the conclusion that the gun was fired in the direction of Poon with the intention of causing him physical injury. We cannot see any grounds for disturbing this finding of fact which is supported by evidence which was believed by the trial judges.

Now, turning to the conviction on the second charge, we propose to consider first, whether the trial judges were correct in their finding, that on the evidence tendered by the prosecution the appellant may reasonably be presumed to have known that the person who used the arm in that robbery was carrying such arm. The evidence on this issue in the robbery at Mandarin Jewellers was entirely different from that in the "Nam Yick" robbery. In the gang robbery at Mandarin Jewellers, all the five members of the gang carried firearms. There was therefore no question of how many of them or which of them carried firearms. This means that even the appellant was carrying a firearm. Now, it cannot be that all five were carrying firearms by sheer coincidence. It must have been planned that all should go armed with guns. Now, when five persons decide to commit gang robbery, and also decide that all five would carry firearms to commit robbery and all five are in fact seen carrying firearms at the scene during the course of the robbery, in our opinion, it is reasonable to presume in those circumstances that when they arrived at the scene of the robbery, each of them knew that the other four were all carrying firearms. And in those circumstances, if one of the robbers uses his firearm in the commission of the robbery, within the meaning of section 2, then each and every one of the other four may reasonably be presumed to have the requisite knowledge under section 5. In our judgment, on the evidence tendered by the prosecution on the second charge, the trial judges were correct in their finding that "there were circumstances present from which ... it was reasonable to presume that the accused knew that the person who used the firearm was carrying it."

The next submission is based on the definition of "use" in section 2 of the Act. It is submitted that the only person who is alleged to have "used" an arm in the robbery at the Mandarin Jewellers is the person who was sitting next to the driver in the front seat of the getaway taxi and is alleged to have shot at Idros bin Abu Bakar, the police constable who was standing guard in front of the jewelry shop of Poh Heng Goldsmith Ltd. It is contended that the shot was fired well over Idros' head as shown by the bullet mark on the pillar which bullet mark was well over 9 feet high from the ground; that it was an indiscriminate shot as shown by the whole pattern of shooting at the Mandarin Jewellers; that it is highly dangerous to assume that it was meant for Idros; that a court should be slow to draw an inference against an accused which is not justified by hard facts and that the finding of the trial judges on this issue is untenable.

The evidence of Idros on this issue was very clear. He claimed that he saw the passenger in the front seat of the taxi pointing his gun at him; that he quickly took cover behind the pillar which was hit by the bullet and that he did so because he feared the bullet might hit him. And a bullet did in fact hit that pillar at a spot 9 ft. 10 ins. high from the ground. It has to be remembered that the shot was fired from a vehicle some distance away in an escape situation with no time to take deliberate aim at the intended target and the fact that the bullet hit the pillar some four feet above Idros' head, does not necessarily mean that the bullet was not meant for him. The bullet may have hit that spot on the pillar due to the barrel of the gun kicking upward when the gun was fired or due to inexpert marksmanship or due to the factual situation at the moment of fire.

Whether or not the gun was fired with intent to cause physical injury to Idros was eminently a question of fact for the trial judges. They found Idros a truthful witness and accepted his evidence as the truth of the matter. They have stated in their grounds: —

"We found Idros bin Abu Bakar to be a simple, not too intelligent but an honest witness. We accepted his evidence that a gun was pointed at him by the nearside front seat occupant of a taxi before he heard the gun shot. We found that the person who fired the gun from the taxi did intentionally fire at Idros bin Abu Bakar."

There was clear evidence before the trial judges, which if believed, showed that the gun was fired at Idros with intent to cause physical injury to him. All the sub-

missions made before us on this issue were also addressed to the trial judges by counsel who defended the appellant at the trial. The trial judges having seen and heard Idros and having considered his evidence in the light of all the submissions made on behalf of the appellant, held that the gun was intentionally fired at Idros. It follows that if it was intentionally fired at Idros, it was fired with intent to cause physical injury to him.

Such a finding of fact, which is supported by evidence which was believed by the trial judges, cannot be disturbed by an appellate court unless there are good grounds for doing so. We can see none in this case.

Finally, it is suggested that the gun was fired at Idros after the robbery was over and the robbers were speeding away from the scene of the robbery and that therefore the act of firing at Idros did not fall within section 5 of the Arms Offences Act, 1973 because it was not done in the course of robbery.

In our opinion the point taken is without substance in view of the definition of robbery.

Robbery is defined in section 390 of the Penal Code as follows: —

"390.—(1) In all robbery there is either theft or extortion.

(2) Theft is "robbery" if, in order to the committing of the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death, or hurt, or wrongful restraint, or fear of instant death, or of instant hurt, or of instant wrongful restraint.

(3) xxx xxx."

As the shot was fired at Idros by one of the robbers while he and his four companions were carrying away the booty, the act of firing was done in the commission of the gang robbery. There is support for this view in *Shyam Behari* v. *State of Uttar Pradesh.*[1]

In our judgment, the trial judges were correct in calling upon the appellant to enter upon his defence on both charges. The appellant did not give evidence on oath. He made a statement from the dock. It was not clear from his statement, what his defence was on the first charge. His defence on the second charge was duress. He claimed that he was compelled to commit that offence at gun point. The trial judges disbelieved him and rejected this defence. The appellant did not raise any other matter. He did not say what steps, if any, he had taken to prevent the use of firearms in both robberies.

In our opinion the trial judges were correct in deciding that the case against the appellant on both charges had been proved beyond a reasonable doubt and in convicting him on both charges. The appeal against both convictions fails and is dismissed.

Appeal dismissed.

Solicitor: *David Marshall.*

SUNDARI RAJA SINGAM v. RASARATNAM RAJA SINGAM

[O.C.J. (Choor Singh J.) February 27, 1976]

[Singapore — Divorce Petition No. 99 of 1974]

Family Law — Matrimonial proceedings — Petition for divorce — Allegation of cruelty on husband's part — Whether facts sufficient to constitute cruelty.

The parties were married on March 17, 1968 and except for a short period of two months, the parties had lived separately. On June 10, 1970, the petitioner gave birth to a son and although the respondent came and saw his son and his wife at the maternity hospital, there was no reconciliation for a number of years. In 1974 the parties began to live together again for about six months and on December 2, 1974 the petitioner left the matrimonial home with her son and went to live with her parents. The petitioner relied on three incidents which took place during this period and said that the cumulative effect of those incidents was that she became so frightened of living with him, that she could not stand it any longer and had to leave him. The first incident was over their son's illness. The respondent took their son to see a specialist at the hospital and came back with some medicine. The petitioner took the medicine to another dispenser to countercheck if it was the right medicine. As a result of this, a quarrel ensued between the parties and the petitioner said that she was slapped hard on the ear. The second incident was over the telephone bill and the parties scratched each other during the quarrel. The third incident occurred when the respondent was doing physical exercises at their home. He requested the petitioner to hold his legs while he stood on his head. In the course of this, one of his legs came into contact with the petitioner's nose and it bled.

The petitioner sought to dissolve her marriage on the ground of her husband's cruelty.

Held: (1) the petitioner had failed to prove beyond a reasonable doubt that there was danger to her life, limb or health, bodily or mental, or a reasonable apprehension of it;

(2) in a case of this nature the conduct complained of must be looked at as a whole and it must be looked at in the light of the sort of people the parties were.

Case referred to:-

(1) *Koh Teng Lam* v. *Elsie Koh* [1976] 1 M.L.J. 103.

DIVORCE PETITION.

N. Vaithinathan for the petitioner.

J. B. Jeyaretnam for the respondent.

Choor Singh J.: This is a wife's petition seeking the dissolution of her marriage on the ground of her husband's cruelty.

The parties were married at the Registry of Marriages at Johor Bahru on March 17, 1968. The husband was then employed as a teacher in Kuala Lumpur and the wife who was also a teacher was employed in Singapore. After the marriage, the wife continued to live with her parents in Kim Keat Road, Singapore and the husband in Kuala Lumpur. At weekends the husband used to drive down to Singapore and spend the weekend with his wife at her parents' house. Sometimes she used to go up to Kuala Lumpur by train and spend the week-end there with her husband. This lasted till the end of December 1969 when the parties set up a matrimonial home in Johor Bahru as the husband had by then obtained a transfer from Kuala Lumpur to Johor Bahru.

The parties lived together in their matrimonial home from December 1969 to January 18, 1970 when the wife left the matrimonial home and went to live with her parents in Singapore.